

CASES OF EXEMPTION OF THE INTERNATIONAL AIR CARRIER FROM LIABILITY IN SAUDI LAW AND THE MONTREAL CONVENTION 1999

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ABSTRACT

The air transport contract entails rights on the passenger or the sender of the goods, as he must pay the freight and follow the instructions of the carrier. There are obligations on the air carrier to ensure the safety of passengers and the preservation of goods and luggage. Otherwise, the air carrier is obligated to guarantee and compensate in cases of breach of his obligation. However, the Montreal Convention on the Regulation of Air Transport decided cases in which the carrier is exempted from liability. Therefore, the research article aimed to identify cases of exemption from liability in Saudi law and compare them with the Montreal Convention on Regulating Air Transport Rules 1999 AD. The study followed the descriptive approach and comparative analysis. The most important results are that the Saudi law exempted the air carrier from liability in the event of force majeure and if the fault was caused by the one affected by one of his affiliations.

KEYWORDS: *Exemption from Liability, Air Carrier, Kingdom of Saudi Arabia & Montreal Convention 1999*

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INTRODUCTION

The air transport contract is one of the most important modern contracts as it saves people time and effort, as countries tended to develop their own laws regulating its provisions and moved internationally to develop international agreements to unify some rules related to international transport by air known as the Warsaw Convention 1929 is an international agreement regulating responsibility for transport International for people, baggage and goods by plane, which has been modified by several protocols. Finally, in the year 1999 AD, some rules of international air transport were unified in the Montreal Treaty, and several contractual relationships are derived from the air transport contract, the most important of these contractual relationships (the relationship of the carrier with the passenger and the sender of the goods. The air carrier on the safety of passengers and goods is one of the most important topics that the Montreal Air Transport Treaty and national laws are concerned with. In this research article, we will be exposed to cases of exemption from liability in Saudi law and the Montreal Convention 1999.

Definition of liability: An obligation to compensate for damages to others due to the wrongful act or the debtor's breach of his obligation (Al-Mazoury, 2018) and the air carrier's liability and obligation to compensate for damages to passengers or baggage originating from the air carriage contract, which is defined as: "An agreement under which the carrier is obligated to: He transfers something or a person to a certain destination in return for a certain fee (Atiya 2002)

The air carrier is defined in the Saudi Executive Regulations for Customers' Rights 2005 as (It is every legal person considered legally authorized to work in the air transport sector in accordance with the regulations of

the Kingdom of Saudi Arabia and operates regular or irregular airlines to transport passengers, mail or goods or any of them).

According to Article (I) of the Montreal Convention 1999, it can be defined as “the international carriage of persons, baggage or goods carried on the charter of an aircraft, as long as the points of departure and final destination, in accordance with the contract concluded between the parties, are located either in the territory of two States Parties or in the territory of one State.” party.

According to Article (134) of the Saudi Civil Aviation Law 2005, which described the nature of the liability of the air carrier as follows: The liability of the air carrier in its relationship with the passenger or shipper of goods and the consignee is contractual in accordance with the air transport contract concluded with each of them, and is subject to the provisions of international treaties to which the Kingdom is a party. The provisions of this system, other regulations, and applicable instructions. The contractual liability of the air carrier assumes that there is a valid contract. The pillars of contractual liability are: the assumed error of the air carrier and the occurrence of material damage to the passenger or goods, and there must be a causal relationship between the carrier’s error and the damage to the passenger or goods. And the Saudi legislator decided in the period (135) of the Civil Aviation Law 2015 to apply the international treaties to which the Kingdom is a party to the international and domestic air transport of people, baggage and goods.

.Saudi Arabia joined the International Air Transport Organization (IATA) on April 17, 1967. On October 15, 2003, it joined the agreement to unify some provisions of air transport known as the Montreal Convention 1999, and the agreement entered into force on November 4, 2003

The Montreal Convention of 1999 regulates several topics, the most important of which are the unification of air transport documents, the obligations of the carrier, the sender and the consignee, the responsibility of the air carrier and determining the estimated compensation in the event of damage or delay in the arrival of goods, air transport carried out by a person other than the contracting carrier, insurance, jurisdiction, arbitration of limitation. Saudi law and the Montreal Convention set cases for exemption or reduction of liability and exemption from contractual liability in deviation from what is required by the general rules of liability, where contractual liability arises if its conditions of error, damage and causation are met, and the victim must be compensated. However, the carrier, as a contracting party in the contract, can absolve himself of liability, provided that the damage to the passenger, goods or baggage was not caused by fraud or serious error, (Al-Sharman. 2018).

According to Article (144) of the Saudi Civil Aviation Law: The carrier can be exempted from his or her responsibility, and therefore the carrier is not obligated to compensate for the damage that occurs in the following cases:

- If the damage resulted directly from an armed conflict or civil disturbance.
- If this person was prevented from using the aircraft by order of the public authorities.
- If it is proven that the damage was caused by an error, negligence, or omission of the aggrieved party, its subordinates or agents.
- If the responsible person proves that the aggrieved party or any of his subordinates or agents have contributed to the occurrence of the damage, the compensation shall be reduced in proportion to their contribution.

- There is no room for exemption or mitigation of liability in the event of the fault of the victim's subordinates or agents, if the aggrieved party proves that they were working outside the limits of their powers.

The affected jurisprudence defines the affected person as the person against whom or a member of his family was subjected to an accident that caused him a loss of money or life (Al-Saadi -2020), and the responsibility of the air carrier requires the following conditions.

- An accident. or delays in transportation.
- If the accident or delay occurred during the air transportation.
- Damage caused by accident or delay.

The general rule according to Article (17)of the Montreal Convention 1999 is that the carrier is responsible for damages and must compensate in the following cases:

- Damages arising in the event of the passenger's death or bodily injury, provided that the accident that caused the death or injury occurred only on board the aircraft or during any of the operations of boarding or disembarking passengers.
- Damage arising from the case of damage, loss or damage to the Checked Baggage, provided that the event that caused the damage, loss or damage occurred only on board the aircraft or during any period during which the Checked Baggage was in the custody of the carrier. He shall not be liable for damages resulting from an inherent defect in the baggage, its quality, or an intrinsic defect in it.
- Damage to unchecked baggage and personal baggage, if the damage was caused by his fault or the fault of his servants or agents.

The liability of the air carrier is based on the presumed error, meaning that the sender is not obligated to establish evidence of the existence of the error on the part of the carrier, but is only obligated to prove his failure to fulfill an obligation imposed by the contract on him, and that the carrier cannot absolve himself of responsibility unless he proves that he or his subordinate or agents have taken all The necessary precautions to avoid damage, or it was impossible for them to take them because of force majeure or a foreign reason in which they have no control, or that the injured (the sender) has caused or contributed by mistake to causing the damage (Hamdallah 2016).

However, according to Article 20 of the 1999 Montreal Convention, the carrier is exempted from liability and therefore not obliged to compensate in the following cases:

- If it is proven that the damage, loss or defect of the goods resulted from one or more of the following causes: The existence of an inherent defect in those goods, or because of their quality, or the existence of an intrinsic defect in them. B. Improper packing of the goods on the part of a person other than the carrier or its servants or agents. c. An act of war or armed conflict
- The carrier shall not be liable for damage arising from delay if he proves that he and his servants and agents have taken all reasonable measures necessary to avoid the damage or that it was impossible for him or them to take such measures.
- If the carrier proves that the damage was caused by, or contributed to, the negligence, error or omission of the

person claiming compensation, or the person from whom he derives his rights, the carrier shall be wholly or partially exempted from his liability towards the claimant to the extent that such negligence, error or omission is The damage may have been caused or contributed to

According to Article(10) of the Montreal Convention, the sender and his agent shall indemnify the carrier for all damages sustained by him or to any other person to whom the carrier is liable, due to the incorrect, incorrect or incomplete statements and declarations made about the shipped goods. Their responsibility for incorrect data (Bashar 2012)

Where the sender and his agent are responsible for the correctness of the data related to the goods transported by air, recorded in the air waybill or submitted by him or on his behalf to the carrier for recording in the goods receipt or for inclusion in the existing records by other means.

CONCLUSIONS

The research article dealt with cases of exemption of the carrier from contractual liability in Saudi law and the Montreal Convention 1999, and the study reached a number of results: The Saudi law applies the rules for cases of exemption from liability to the Montreal Convention. Research in this field due to the lack of Arab references on cases of exempting the air carrier from liability.

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